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AF

PATENT
450100-02333

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Mitsuhiro Suzuki et al.
Serial No. : 09/499,562
Filed : February 7, 2000
For : COMMUNICATION APPARATUS, COMMUNICATION SYSTEM,
AND METHOD OF THE SAME
Examiner : Grigory Gurshman
Art Unit : 2132

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**AMENDMENT UNDER 37 C.F.R. § 1.116 AND PETITION FOR WITHDRAWAL OF
FINALITY OF THE PRECEDING OFFICE ACTION**

**Mail Stop AF
Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450**

Sir:

This is in response to the Office Action dated December 6, 2004:

PETITION FOR RECONSIDERATION OF FINALITY OF OFFICE ACTION

The Examiner is requested to reconsider the Final nature of this office action. The preceding office action dated 4/23/04 was technically deficient in that the reference relied upon was improper under 35 U.S.C. § 103(c). *See* Office Action, 12/6/04 at ¶ 3 (stating Examiner's agreement that U.S. Patent No. 6,625,811 is not properly considered a prior art reference).

While amendments were made to the claims in response to the earlier office action, these amendments were for the purpose of correcting 35 U.S.C. § 112 issues relating to grammatical, idiomatic, and punctuation deficiencies in the claims.

In the instant office action dated 12/6/04, the Examiner relies for the first time on new reference JP 10303840. This new reference was not cited because of the Applicants' amendments to the claims, but rather to correct the impropriety of the earlier rejection.

By making the instant office action final, the Examiner has prejudiced the Applicants in so much as this response represents Applicants' first opportunity to respond to the Examiner's rejections on the merits. The Examiner cannot expect, nor should the Applicants be forced to respond on the merits to an office action based on an improper reference.

Accordingly, withdrawal of the finality this office action is earnestly solicited. If any fee is due for this Petition, the Office is authorized to charge Petitioner's Deposit Account No. 50-0320.